



BUREAU VAN DIJK

A Moody's Analytics Company

Transparent trade

Understanding the
latest thinking on
beneficial ownership,
power and control

**Welcome to the
business of certainty**

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About Bureau van Dijk

At Bureau van Dijk we're in the business of certainty. Leaders in informing business decisions, we are committed to capturing and treating the right data to deliver the richest, most reliable private company information on the market.

Our solutions help you to achieve greater efficiency and business growth. We provide you with access to precise, standardized information on private companies and corporate structures. We give you more than mere "data". We offer you a greater level of certainty.

You're only as reputable as your associates

The onus has shifted onto companies themselves to discover any criminal or risky connections in their third-party network

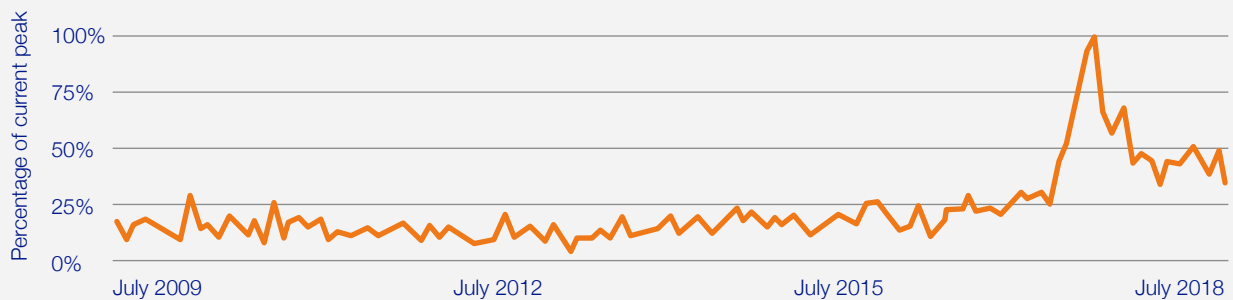
The compliance landscape has been shaken up over the past 10 years by a landslide of data. While technology has uncovered the interconnectedness of the business ecosystem, it has also raised regulatory expectations worldwide.

That's led to growing sanctions lists and increasing enforcement. To avoid unexpected fines and protect your company's reputation, you'll need to be certain you can trust your business partners. But when it comes to third-party relationships, do you really know who you're doing business with?

Now, more than ever, you need to understand exactly who controls your suppliers and business partners, who your clients are, and whether any changes could lead to non-compliance. That's why identifying beneficial owners, and who has power and control over your partners, is crucial to managing compliance risk.

Pinpointing beneficial ownership should be an integral part of your company's anti-money laundering (AML), know your customer (KYC), enhanced due diligence (EDD) and compliance strategy.

Interest in beneficial ownership has grown



Interest in beneficial ownership since May 2018, when FinCEN introduced its CCD Final Rule, introducing new requirements for beneficial ownership reporting by financial institutions.

Source: Google Trends searches for "beneficial ownership" June 2018 to July 2019

Beneficial ownership: what the regulators say

While concepts of beneficial ownership differ in their detail, regulators agree on the defining principles

The FATF definition

The [Financial Action Task Force](#) (FATF) is an inter-governmental standard-setter for combatting money laundering, terrorist financing and other financial crime. FATF's remit covers not only banks and financial institutions, but also making recommendations for how governments identify and respond to financial crime within non-regulated industries.

FATF defines a [beneficial owner](#) as the natural person(s) who ultimately own or control a customer (including situations in which ownership or control is exercised through a chain of ownership or by means of control other than direct control); or the natural person on whose behalf a transaction is being conducted, including those who exercise ultimate effective control over a legal person or arrangement.

The FinCEN definition

The US regulator is the Financial Crimes Enforcement Network (FinCEN), an agency of the US Treasury. Its [CDD Final Rule](#) defines a [beneficial owner](#) as:

- each individual, if any, who, directly or indirectly, owns 25% or more of the equity interests of a legal entity customer.
- a single individual with significant responsibility to control, manage, or direct a legal entity customer, including an executive officer or senior manager, such as the chief executive, chief financial officer, chief operating officer, managing member, general partner, president, vice president or treasurer; or any other individual who regularly performs similar functions, as there is significant diversity in how legal entities are structured.

FinCEN's CDD Final Rule came into force in May 2018 to "improve financial transparency and prevent criminals and terrorists from mis-using companies to disguise their illicit activities and launder their ill-gotten gains."

The EU definition

The European Union's definition of ultimate beneficial ownership (UBO) forms Article 30 of the [Fourth Anti-Money Laundering Directive](#) (AML4) and also adopts a 25% threshold:

"A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a natural person shall be an indication of direct ownership. A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership."

As this is a recommendation rather than a mandate, the threshold "applies without prejudice to the right of member states to decide that a lower percentage may be an indication of ownership or control."

In fact it's possible to wield control over a business without ownership, even with less than a 1% holding in voting shares; this may tip the balance between other, majority shareholders with voting rights. It's also possible to control an owner or shareholder who is indebted, while remaining invisible to regulators. Understanding this concept of indirect control is crucial to understanding beneficial ownership (see p11).

Tracing control

It can be hard to identify who controls your trading partners

Control is not just about ownership, it's about leverage. "In the old days they kept it in the family," says Bureau van Dijk senior director of compliance solutions Bill Hauserman.

But as detection has improved, bad actors have got better at covering their tracks, using ownership structures with no obvious trace back to the real controlling individual or entity. Leverage over the apparent owner, such as a loan, allows those who want to hide their activities to wield indirect power.

These indirect links matter. The Office of Foreign Asset Controls (OFAC) will fine companies that trade with a sanctioned entity or an entity that is sanctioned "by extension" or "by association".

Economic sanctions, which can cover anything from a country to a group or an individual, are issued by OFAC in the US and by the European Commission and member states in the EU. Sanctions can apply to all organizations, not just those in regulated industries such as finance, energy and telecoms.

This means that if an unbroken chain of ownership connections of 50% or more lead to a company that's fully or partially owned by a sanctioned company or individual, all the companies within the chain are also sanctioned.

Sanctions can be imposed on entities or imposed on individuals with a less nuanced definition of ownership control. They are generally set at 50% for most sectors. But this can cascade down through multiple layers of ownership, making thorough investigative processes a must.



The figure (left) shows how a US registered company is connected with a specially designated national so that all companies in the chain are sanctioned by extension.

Protecting your company

Data is your first line of defence when it comes to protecting your business from links to wrongdoing

Uninvestigated data chains of power and control create risk. Ownership links and sanctions lists can rapidly change so that, under [OFAC's 50% rule](#), you find your company tied to a US sanctioned entity or individual, for example. Up-to-date ownership information is vital, especially if your company uses automated tools.

In 2019 Apple's own AI-based screening tool failed to recognise a match between SIS d.o.o on OFAC's sanctioned list and SIS DOO in its database of partners, because the latter part of the name had been entered in upper case. Apple, which also had not identified links with SIS d.o.o's sanctioned majority owner Savo Stjepanovic, was fined US\$467,000.

In April 2018 OFAC added 12 Russian nationals to its specially designated nationals (SDN) sanctions list for profiting from "malign activity". This had a knock-on effect on 1,300 companies, which Orbis identified as sanctioned by extension through the new SDNs.

None of these 1,300 companies were on any sanctions list; 90% were registered outside the US. But trading with them would still lead to fines. (See page 7.)

In Europe, discovering who holds power and control over the businesses in your company's ecosystem can also be challenging. EU member states have been mandated to collect and publish beneficial ownership information in accordance with the AML4 and AML5 directives.

National central registers of beneficial owners, including people of significant control (PSCs) must be made accessible to the general public. But the registers rely on self-reporting without independent checks, so where registers have been set up, data is often not available or incorrect.

Minimum UBO information recommended by the European Commission for inclusion in national registers:



- month and year of birth
- country of residence
- nationality
- extent of beneficial ownership or interest

Even the registers that meet the EU's requirements may not be enough to source accurate, up-to-date and comprehensive company information. Other company data resources are therefore an essential part of due diligence, onboarding, compliance and risk management processes.

Connections can be costly

Regulators are ever more likely to take action if your due diligence fails to uncover connections

“Sanctions fines, at tens or a couple of hundred thousand, are like a speeding ticket,” says Hauserman. “Whereas a bribery conviction can be hundreds of millions of dollars.”

Ignoring the risk of connections with unknown parties is therefore not an option. When in 2015 Netherlands based telecoms company VimpelCom (now VEON) acquired two companies in Uzbekistan, “Senior management tried to push this through without disclosing certain basic information,” says federal prosecutor and Foreign Corrupt Practices Act (FCPA) expert Michael Volkov.

“Both of the target companies had shell companies in their ownership structure. In other words, the ultimate recipient of the money that was being paid [for the acquisition] was a shell company.”

Board members have a fiduciary responsibility, warns Volkov, and they should ask who owns such shell companies. Had they done so, their research could have led them to Gulnara Karimova, daughter of the Uzbek president, against whom sanctions were levied. In 2016 the US Department of Justice and Dutch regulators fined VimpelCom \$835 million.

Insufficient due diligence carried out by a drilling company operating in Angola regarding its joint venture business partner was a problem, according to Volkov. The authorities determined that the business partner was 10% owned by sanctioned Manuel Vicente, head of the state-owned Angolan oil company Sonangol. “You need to go down to the 10% level, even the 5% level,” Volkov explains.

Standard Chartered Bank, registered in the UK, reached a settlement with OFAC in April 2019 to resolve sanctions violations relating to Zimbabwe, as well as to individuals on OFAC’s SDN list. All of the Zimbabwe transactions in the case were related to organizations with 50% ownership stakes held directly or indirectly by individuals on the SDN list. (Read more about OFAC’s 50% rule on p9.)

“A bribery conviction fine can be hundreds of millions of dollars”

Don't risk your reputation

Your firm can suffer as a result of unwanted associations

Politically exposed persons (PEPs) and negative media coverage around beneficial owners can also lead to serious damage to your brand. Unsurprisingly, an ever growing number of companies in non-regulated industries choose to carry out checks to help protect their reputation.

No brand wants to find itself connected to beneficial owners who appear on watch lists, or who are involved in money laundering, bribery or corruption. Discovering that power and control over your partners is held by an individual with connections to [modern slavery](#), drug trafficking or terrorist financing could be disastrous.

Access to the right company information can prevent unwanted connections; while in most cases databases don't reveal whether a beneficial owner presents a risk, they do reveal the owner's identity, which allows the necessary research.

If you can't find any ownership information, this could be a sign you're dealing with a shell company, prompting further investigation to discover who has power and control.

Complex offshore ownership structures are also potential red flags, Transcrime senior financial crime researcher Michele Riccardi warns: "Companies with very high complexity are 4.7 times more likely to have sanctions or enforcement, and they're 10.8 times more likely to have intermediaries with sanctions or enforcement." They also have a 7.5 times higher number of PEPs among their intermediaries, he says.

"Bad actors have got better at using ownership structures with no obvious trace back to the real controlling individual or entity"

Challenges, pitfalls and solutions

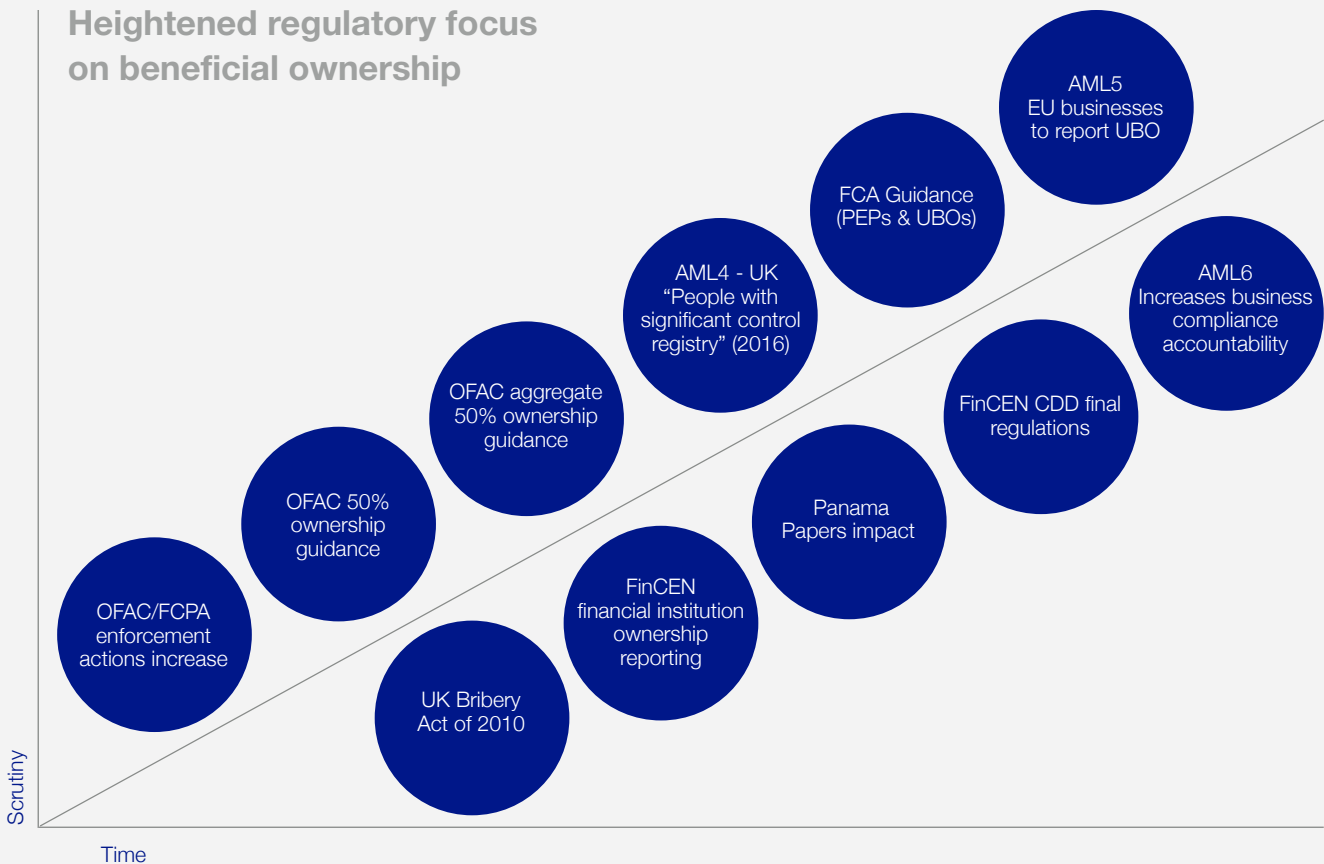
Data deteriorates fast

Due diligence processes don't stop with onboarding. Third-party ownership structures are ever changing and need monitoring.

Access to structured data is vital, says Hauserman: "Orbis shows millions of companies have some change of ownership each month, and a significant number are a control change, which means the EU and OFAC 50% rule are definitely in play."

Data deteriorates quickly and needs to be regularly updated. It's not just the identity of the owners that changes, but the percentage of shares they hold, with some slipping in and out of the recognized definitions of a beneficial owner.

Heightened regulatory focus on beneficial ownership



Power and control

When owners are not in control it's important to know who is

Ownership and voting power, or “control”, are not always in the same hands.

“If you account for all the ways that corporate actions can be voted within an organization, you may find that someone who has 0.75% of total shareholdings could have as much voting power as another with 49.5%,” says Hauserman.

As awareness of increasing enforcement and the need for enhanced due diligence grows, companies are already considering the importance of control as well as ownership. (See page 11.)

“It’s all about alliances and what could be going on behind the scenes,” Hauserman says. “For example, a \$10 million loan from one shareholder to another provides control leverage that could be invisible but demonstrates the power one shareholder has in influencing or flipping a corporate decision.”

Regulators acted in the case of Och-Ziff, where the company had an equity interest of less than 50% in a joint venture but exercised managerial control.

Next was Alcatel-Lucent which, with an ownership interest of less than 50%, was considered nevertheless to have the trappings of management control, connecting the company to an international bribery case.

There can be hidden risks from entities that do not fit the traditional definitions of ownership and yet control an organization.

“It’s not just who owns the business, but how they own the business,” says Bureau van Dijk director compliance solutions Ted Datta. “Looking at the structure that’s been created around a business can give you evidence of control. Control is subjective, so we’ve created a model to predict the likelihood of control, based on the structure of the business.”

“Even businesses not required to have an AML program should use KYC and other due diligence tools to mitigate hidden risks to their reputation and avoid fines,” says Hauserman.



Bureau van Dijk
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Ted Datta

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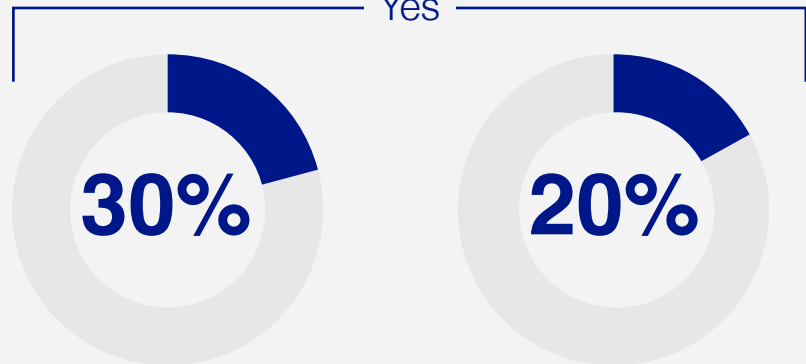
Owners and shareholders

Addressing the question of ownership vs control

Some 1,300 professionals from a range of industries who joined Bureau van Dijk's webinar "Exploring shareholder power and control" responded to the question:

A controlling owner is not necessarily a majority shareholder. Do you consider this in your due diligence program?

Yes



We have processes that address this

We are now building a process to incorporate this

No



We are considering this enhancement to our program

We are waiting for more specific guidance or enforcement action

This is entirely new for our organization

Taking action

Quality data supports certainty and helps reduce costs

Many companies trying to find out who owns or controls their partners discover they're holding bad data.

Some 10-30% of third-party names companies hold in their master data are neither registered, nor established marketing names.

Starting with the wrong information significantly hampers due diligence and finding beneficial ownership information, increasing your risk of doing business with a sanctioned entity or a party that's sanctioned by extension.

The starting point is validating an entity's name. This can be done using a comprehensive database of company information and your portfolio of clients and third-party data. It begins with a cross-referencing exercise using a database such as Orbis.

Risk analysts carrying out data discovery on an organizational structure can be swamped with dozens if not hundreds of entities to search through, Hauserman says. "The intent of Orbis is to support this type of due diligence; legal entity validation up front that gives you the target. If you have the right target, then layering on owners, directors and managers is far simpler."

Workflow tools such as Compliance Catalyst together with the Orbis database offer access to the WorldCompliance database of PEPs and sanctions information, enhancing your risk mitigation processes. Establishing this kind of risk management process can also reduce costs.

In "Beneficial ownership, have you got it right?", Data Derivatives founder Keith Furst explains: "Getting as much accurate data on the entity up front will reduce operational costs of screening entities on an ongoing basis. Beneficial ownership adds another layer of coverage to this framework by revealing more persons or entities to screen against sanctions, PEPs and negative news lists."

"Starting with the wrong information hampers due diligence, increasing your risk of doing business with a sanctioned entity"

A proactive approach

High standards for due diligence make an impact on fincrime

Fines relating to sanctions or other regulatory enforcement are a strong incentive to keep beneficial ownership high on your agenda, as is the risk of reputational damage from doing business with the wrong people.

While regulators scrutinize ever more closely, bad actors grow better at hiding, whether they're behind shell companies with complex corporate structures, or exerting control via voting power.

The need for due diligence and KYC checks on partners, suppliers and other third parties continues to be a crucial part of a business's day-to-day operations. Operationalizing use of technology to build a comprehensive understanding of who owns the companies in your ecosystem is essential to risk mitigation. Compliance teams are taking action not only to make ownership known, but also to understand where shareholder power and control lie.

When both regulators and companies themselves set high standards for due diligence it is possible to make a real impact on financial crime. "OFAC's guidance is saying they're serious about this, and with more companies performing KYC screening, it makes it harder for bad actors to hide and puts a dent in the money laundering that's occurring at the rate of nearly \$2 trillion every year," says Hauserman.



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senior director
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Bill Hauserman

"OFAC's guidance is saying they're serious about this, and with more companies performing KYC screening, it makes it harder for bad actors to hide"

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How Bureau van Dijk can help



Orbis is the world's most powerful comparable data resource on private companies. It gives you:

- standardized financial reports, so you can search for and compare companies wherever they are in the world
- financial strength metrics, including for companies without detailed information
- extensive corporate ownership structures and beneficial ownership information, including directors, managers and shareholders
- politically exposed persons (PEPs), sanctioned and sanctioned-by-extension entities associated with companies, individuals and marine vessels
- anti-money laundering (AML) documentation
- environmental, social and governance (ESG) reputational risk metrics and ratings
- M&A deals and rumours
- flags for negative mentions in the news, blogs and social media

You can use add-ins to populate templates in Excel and PowerPoint with data from Orbis, including data points, formulae, graphs and text fields. You can view data instantly using your scoring methods, analysis or presentation methods. And you can search for companies within Excel. Your templates will be automatically updated whenever Orbis is updated.



The new, enhanced Compliance Catalyst is a complete rebuild of our popular risk platform for on-boarding, due diligence and monitoring. It helps you:

- monitor entities and individuals using a new adverse media tool powered by AI technology to identify negative news and intelligently screen false positives from your news flags
- combine your data with data from Orbis in one platform to spot risk quickly and escalate more efficiently
- make fast assessments so you can focus your resources on higher-risk cases
- check for conflicts of interest and links between people and entities
- carry out light-touch assessments through to “full works” analysis, depending on your needs
- screen instantly when you search a company or entity by name, giving you an initial view before you even run a risk assessment
- set flexible alerts — they're easy to check and dismiss from your task list, and you can choose your level of sensitivity to changes so you only get the alerts you need
- deploy a range of models so you can start screening entities “out of the box” — or create your own model tailored to your risk profiles
- make use of optional enhanced due diligence add-on services

Other resources



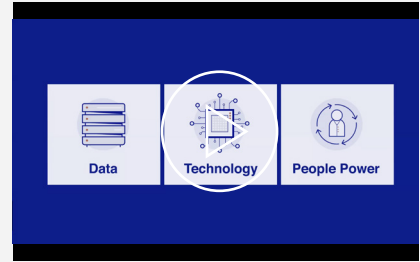
Webinar

bvdfinfo.com/en-gb/powerandcontrol



Video

bvdfinfo.com/en-gb/secondarysanctions



Video

bvdfinfo.com/en-gb/compliancecatalyst-demo



White paper

bvdfinfo.com/en-gb/sanctionscompliance



Poster

bvdfinfo.com/en-gb/ownershipposter



A - Z guide

bvdfinfo.com/en-gb/complianceguide

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